

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**AMY SMITH WILDER**  
Claimant

VS.

**WESTLAKE HARDWARE, INC.**  
Self-Insured Respondent

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Docket No. 1,004,885

**ORDER**

Respondent and claimant requested review of the February 25, 2005 Award by Administrative Law Judge Kenneth J. Hursh. The Board heard oral argument on June 29, 2005.

**APPEARANCES**

Steven Jarrett of Overland Park, Kansas, appeared for the claimant. Mark E. Kolich of Lenexa, Kansas, appeared for the self-insured respondent.

**RECORD AND STIPULATIONS**

The Board has considered the record and adopted the stipulations listed in the Award.

**ISSUES**

The litigated issue in this workers compensation claim was the nature and extent of claimant's functional impairment. A work disability was not claimed. The Administrative Law Judge (ALJ) found the claimant suffered a 5 percent functional impairment to the body as a whole.

The respondent requests review of the nature and extent of disability. Respondent argues the claimant does not have any functional impairment.

The claimant requests review of the nature and extent of disability. Claimant argues the only medical evidence based upon the AMA *Guides*<sup>1</sup> establishes claimant suffers a 14 percent functional impairment.

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<sup>1</sup> American Medical Ass'n, *Guides to the Evaluation of Permanent Impairment* (4th ed.). All references are based upon the fourth edition of the *Guides* unless otherwise noted.

The sole issue for Board determination is the nature and extent of claimant's functional impairment.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the evidentiary record filed herein, the stipulations of the parties, and having considered the parties' briefs and oral arguments, the Board affirms the ALJ's Award.

The ALJ's Award sets out findings of fact and conclusions of law that are detailed, accurate and supported by the record. It is not necessary to repeat those findings and conclusions herein. The Board approves those findings and conclusions and adopts them as its own.

The sole issue is the extent of claimant's functional impairment. Functional impairment is the extent, expressed as a percentage, of the loss of a portion of the total physiological capabilities of the human body as established by competent medical evidence and based on the *AMA Guides to the Evaluation of Permanent Impairment*, if the impairment is contained therein.<sup>2</sup> The determination of the existence, extent and duration of the injured worker's incapacity is left to the trier of fact.<sup>3</sup> It is the function of the trier of fact to decide which testimony is more accurate and/or credible and to adjust the medical testimony with the testimony of the claimant and others in making a determination on the issue of disability. The trial court must make the ultimate decision as to the nature and extent of injury and is not bound by the medical evidence presented.<sup>4</sup>

Claimant argues that only Dr. Fernando M. Egea properly relied upon the *AMA Guides* in rating the claimant's functional impairment. The Board disagrees. Claimant's attorney referred claimant to Dr. Dennis Cowan for examination. Dr. Cowan specifically noted that he referenced the same section of the *AMA Guides* that Dr. Egea utilized. That section provided a range from 0 to 14 percent for a mild impairment. Dr. Cowan conducted extensive testing of claimant. The doctor noted that based upon his extensive testing and his observation of claimant he concluded claimant had a 0 percent functional impairment.

The ALJ noted that while claimant had some residual psychological effects from the concussion she suffered at work nonetheless, her post-accident school and work history demonstrated she suffered little impairment. Consequently, the ALJ felt claimant's condition fit more appropriately in the lower range of the percentages suggested by the

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<sup>2</sup> K.S.A. 44-510e(a).

<sup>3</sup> *Boyd v. Yellow Freight Systems, Inc.*, 214 Kan. 797, 522 P.2d 395 (1974).

<sup>4</sup> *Tovar v. IBP, Inc.*, 15 Kan. App. 2d 782, 785, 817 P.2d 212, *rev. denied* 249 Kan. 778 (1991).

AMA Guides and awarded claimant a 5 percent functional impairment. The Board agrees and affirms.

**AWARD**

**WHEREFORE**, it is the finding of the Board that the Award of Administrative Law Judge Kenneth J. Hursh dated February 25, 2005, is affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of July 2005.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Steven Jarrett, Attorney for Claimant  
Mark E. Kolich, Attorney for Respondent and its Insurance Carrier  
Kenneth J. Hursh, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director